

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Crystal Weaver Brown for KMM 1490,) C/A No. 5:17-cv-01718-PMD-KDW
)
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Plaintiff,)
)
vs.) REPORT AND RECOMMENDATION
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)
Commissioner of Social Security,)
)
)
Defendant.)
)

Plaintiff, a pro se litigant requesting to proceed *in forma pauperis*, brings this action appealing the Social Security Administration's ruling on a benefits claim. ECF Nos. 1, 3. Pursuant to 28 U.S.C. §636(b)(1) and Local Civil Rule 73.02(B)(2)(a) and (e) (D.S.C.), this magistrate judge is authorized to review all pretrial matters in such pro se cases and to submit findings and recommendations to the district court. This case is before the court because of Plaintiff's failure to comply with the undersigned's Orders of July 24, 2017 and August 18, 2017, ECF Nos. 9, 12.

I. Background

Plaintiff filed this case on June 29, 2017. ECF No. 1. On July 24, 2017, the undersigned ordered Plaintiff, within twenty-one (21) days, to submit a personally signed Complaint and a corrected Form AO-240. Plaintiff was also directed to provide service documents and a properly completed consent form should she desire to consent to a magistrate judge presiding over this case. ECF No. 9. The Order specifically warned Plaintiff that if she did "**not bring this case into proper form within the time permitted by this Order, this case may be dismissed for failure to prosecute and failure to comply with an order of this court under Rule 41 of the Federal Rules of Civil Procedure.**" *Id.* (emphasis in original).

Plaintiff did not respond at all to the June 29, 2017 Order. On August 18, 2017, the court issued a second Order directing Plaintiff to provide the same documents requested in the initial Order and informing Plaintiff that this was her final opportunity to bring the case into proper form. ECF No. 12. In that Order, Plaintiff was given a deadline of September 8, 2017 (plus three mailing days) to bring her case into proper form. Plaintiff was specifically informed as follows, “**If you do not bring this case into proper form within the time permitted by this Order, this case will be recommended for dismissal for failure to prosecute and failure to comply with an order of this court under Rule 41 of the Federal Rules of Civil Procedure.**” *Id.* (emphasis in original). Plaintiff has not provided the information required, and the time for Plaintiff’s compliance has now passed. The court mailed these Orders to Plaintiff at the address she provided to the court, and the mailings have not been returned as undelivered. Thus, it appears that Plaintiff received the both Orders but chose not to respond or continue to prosecute this case.

II. Discussion

Plaintiff’s failure to respond to either Order in this case despite having been provided with two separate opportunities to do so indicates her intent not to prosecute this case. Plaintiff’s failure to comply with this court’s Orders within the time permitted, after having been warned of the need to respond and of the consequences of failure to respond, subjects this case to dismissal. *See Fed. R. Civ. P. 41(b)* (district courts may dismiss an action if a plaintiff fails to comply with “any order of the court.”); *see also Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989) (dismissal with prejudice appropriate when warning given); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982) (court may dismiss *sua sponte*); *see also* General Order, *In Re: Procedures in Civil Actions Filed by Non-Prisoner Pro Se Litigants*, No. 3:07-mc-5015-JFA, at 2

(D.S.C. Sept. 18, 2007) (requiring a plaintiff to bring a case into proper form or suffer dismissal without prejudice for failure to prosecute).

III. Recommendation

Accordingly, it is recommended that this case be dismissed *without prejudice* for failure to comply with a court order and failure to prosecute this case in a timely manner.

IT IS SO RECOMMENDED.



September 15, 2017
Florence, South Carolina

Kaymani D. West
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**